

A taxpayer may apply for reasonable cause abatement of a penalty. See 86 Ill. Adm. Code 700.400. (This is a GIL).

March 8, 2001

Dear Xxxxx:

This letter is in response to your letter dated December 21, 2000 to Mr. Paul Caselton. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Happy Holidays!

That's the easy part. Enclosed per your request from our discussion at the practitioners' meeting are copies of my letters dated July 26, 2000 and January 17, 2000. Also enclosed is a copy of Form ST-1 for January 1998, the remittance for \$168.91 and my Power of Attorney.

What has been misplaced are a number of copies of communications to the Department explaining the clerical error and requesting penalty relief. I am hoping that you will be able to extract the originals or the copies I previously sent from your files.

In summary, the bookkeeper erroneously prepared the tax payment for January 1998 for \$168.91 instead of \$16,891. Upon contact from the DOR, the taxpayer immediately paid the difference. Subsequently, after failing to get relief from written arguments, the interest was paid. Ultimately, the penalty and disallowed discount were paid with interest.

When I contacted the tax specialist, I was told that their history in the last two years contained a \$60 penalty "that they paid." Accordingly, this penalty could not be waived due to their "history."

Again, I believe that the record shows the Company to have a good filing and payment history. I submitted copies of the checks indicated in the 01-17-00 letter to refute the assertion that the return was filed late. I believe that, given the account history, the taxpayer's statement that the initial check with a misplaced decimal point is extremely probable. Finally, all interest was paid and the taxpayer was penalized \$301 in the loss of the discount.

Please be advised the Legal Services Office does not normally make determinations of reasonable cause abatement for the Department of Revenue. As a general proposition, a taxpayer may obtain a waiver of penalty in one of two ways. The first is to submit a waiver request to the Reasonable Cause Review Unit. Taxpayers submitting such requests must provide proof to establish they had reasonable cause for not timely paying their tax liability. See 35 Ill. Adm. Code 700.400.

The second option is to submit a petition for abatement of penalty to the Board of Appeals. The Board of Appeals will make a recommendation to the Director of Revenue who will then issue an order to either waive the penalty or allow it to stand. See 86 Ill. Adm. Code 210.101 et seq.

If a taxpayer exercises the first option and is denied penalty abatement, he may protest and request an administrative hearing on the imposition of the penalty on the basis of reasonable cause without protesting the underlying tax liability. See 35 ILCS 735/3-8. If the taxpayer does not request such a hearing within the legally specified timeframe, he may request a discretionary hearing by submitting a written application therefor to the Chief Administrative Law Judge. Please be advised that in cases of failure to timely protest, the reasons for requesting the hearing would have to be very compelling and cogent for such a request to be approved. See 86 Ill. Adm. Code 200.175.

The Department realizes that there are sometimes requests for abatement where it may appear the assessment of penalty or interest is not equitable, but regulations do not allow the Department's Review Unit to make an adjustment. For example, if a taxpayer exercises the first option and is denied abatement on the basis that a bookkeeper error is not reasonable cause, the taxpayer would still have the right to exercise the second option by petitioning the Board of Appeals.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
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